

§ 165.90 Operational, inspection and maintenance requirements for all new and existing containment structures.

(a) *What are the operating procedures required for all new and existing containment structures?* As the owner or operator of a new or existing pesticide containment structure, you must:

(1) Manage the structure in a manner that prevents pesticides or materials containing pesticides from escaping from the containment structure (including, but not limited to, pesticide residues washed off the containment structure by rainfall or cleaning liquids used within the structure.)

(2) Ensure that pesticide spills and leaks on or in any containment structure are collected and recovered in a manner that ensures protection of human health and the environment (including surface water and groundwater) and maximum practicable recovery of the pesticide spilled or leaked. Cleanup must occur no later than the end of the day on which pesticides have been spilled or leaked except in circumstances where a reasonable delay would significantly reduce the likelihood or severity of adverse effects to human health or the environment.

(3) Ensure that all materials resulting from spills and leaks and any materials containing pesticide residue are managed according to label instructions and applicable Federal, State and local laws and regulations.

(4) Ensure that transfers of pesticides between containers, or between containers and transport vehicles are attended at all times.

(5) Ensure that each lockable valve on a stationary pesticide container, if it is required by § 165.45(f), is closed and locked, or that the facility is locked, whenever the facility is unattended.

(b) *What are the inspection and maintenance requirements for all new and existing containment structures?* As owner or operator of a new or existing pesticide containment structure, you must:

(1) Inspect each stationary pesticide container and its appurtenances and each containment structure at least monthly during periods when pesticides are being stored or dispensed on the containment structure. Your in-

spection must look for visible signs of wetting, discoloration, blistering, bulging, corrosion, cracks or other signs of damage or leakage.

(2) Initiate repair to any areas showing visible signs of damage and seal any cracks and gaps in the containment structure or appurtenances with material compatible with the pesticide being stored or dispensed no later than the end of the day on which damage is noticed and complete repairs within a time frame that is reasonable, taking into account factors such as the weather, and the availability of cleanup materials, trained staff, and equipment.

(3) Not store any additional pesticide on a containment structure if the structure fails to meet the requirements of this subpart until suitable repairs have been made.

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§ 165.92 What if I need both a containment pad and a secondary containment unit?

You may combine containment pads and secondary containment units as an integrated system provided the requirements set out in this subpart for containment pads and secondary containment units in §§ 165.85(a) and (b), 165.87(a) and (b) and § 165.90, and as applicable, §§ 165.85(c)-(f) and 165.87(c)-(f) are satisfied separately.

§ 165.95 What recordkeeping do I have to do as a facility owner or operator?

As a facility owner or operator subject to the requirements of this subpart, you must maintain the following records, and you must furnish these records for inspection and copying upon request by an employee of EPA or any entity designated by EPA, such as a State, another political subdivision or a Tribe:

(a) Records of inspection and maintenance for each containment structure and for each stationary pesticide container and its appurtenances must be kept for 3 years and must include the following information:

(1) Name of the person conducting the inspection or maintenance;

(2) Date the inspection or maintenance was conducted;

(3) Conditions noted;

(4) Specific maintenance performed.

(b) Records for any non-stationary pesticide container designed to hold undivided quantities of agricultural pesticides equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide that holds pesticide but is not protected by a secondary containment unit meeting these regulations must be kept for 3 years. Records on these non-stationary pesticide containers must include the time period that the container remains at the same location.

(c) Records of the construction date of the containment structure must be kept for as long as the pesticide containment structure is in use, and for 3 years afterwards.

§ 165.97 States with existing containment programs.

(a) *What options are available to States that already have containment regulations?* States that have promulgated containment regulations effective prior to August 16, 2006, and which also have primary enforcement responsibility and/or certification programs, have the option of continuing to implement their own programs in lieu of these Federal regulations.

(b) *How may a State request authority to continue implementing its State containment regulations?* A State with pesticide containment regulations may request the authority to continue implementing State containment regulations by August 16, 2007 in the following manner:

(1) The State must submit a letter and any supporting documentation to EPA. Supporting documentation must demonstrate that the State's program is providing environmental protection equivalent to or more protective than that expected to be provided by the Federal regulations in this subpart.

(2) The State must identify any significant changes to State regulations which would be necessary in order to provide environmental protection equivalent to the EPA regulations, and develop an estimated timetable to effect these changes. The letter must be signed by the designated State Lead Agency.

(c) *How will EPA notify the State if its request is granted?* EPA's Office of Pesticide Programs will review the State's correspondence and determine whether the State program is adequate to provide environmental protection equivalent to or more protective than these Federal regulations for new and existing containment structures. EPA's Office of Pesticide Programs will inform the State of its determination through a letter authorizing or declining to authorize the State to continue implementing its containment regulations and will detail any reasons for declining authorization.

(d) *How must a State inform EPA of revisions to its containment regulations?* Any state that has received authorization to continue implementing its state containment regulations must inform EPA by letter signed by the designated State Lead Agency within 6 months of any revision to the State's containment regulations. EPA will inform the state by letter if it determines that the State's containment regulations are no longer adequate based on the revisions. The State's containment regulations will remain in effect, unless and until EPA sends the state a letter making this determination.

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